

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DISTRICT

In re:) Case No. 08-43324-399
ALBERS MANUFACTURING COMPANY, INC.,) Chapter 7
Debtor,)
)
) Adv. Proc. No. _____
TRACY A. BROWN, CHAPTER 7 TRUSTEE,) COMPLAINT TO RECOVER PREFERENTIAL TRANSFER
Plaintiff,)
v.) Spencer P. Desai, Esq. Capes, Sokol, Goodman & Sarachan, PC 7701 Forsyth Boulevard, 12 th Floor St. Louis, Missouri 63105 (314) 721-7701
FASTENAL COMPANY,)
Defendant.)

COMPLAINT TO RECOVER PREFERENTIAL TRANSFER

COMES NOW Trustee Tracy A. Brown ("Trustee"), by and through counsel, and for her Complaint to Recover Preferential Transfer, states to the Court as follows:

1. Tracy A. Brown is the duly appointed and acting Trustee herein.
2. This Court has jurisdiction under 11 U.S.C. §§ 547 and 550 and 28 U.S.C. §§ 1334 and 157. This adversary proceeding is a core proceeding, under 28 U.S.C. § 157(b)(2)(F), arising under Title 11, U.S.C., and arising in the above referenced case under Chapter 7 of the Bankruptcy Code, now pending in this court.
3. Within 90 days before the filing of the petition in this case Albers Manufacturing, Inc. ("Debtor") transferred to Defendant Fastenal Company ("Defendant") the sum of \$22,605.44, consisting of the following payments: (1) Check # 71199 in the amount of \$71.08 on March 7, 2008, attached hereto as Exhibit A; (2) Check # 71259 in the amount of \$612.50 on April 14, 2008,

attached hereto as Exhibit B; and (3) Check # 71284 in the amount of \$21,921.86 on April 30, 2008, attached hereto as Exhibit C ("Transfers").

4. The Transfers were made for or on account of an antecedent debt owed by Debtor before such Transfers were made.

5. The Transfers were made while Debtor was insolvent.

6. The Transfers enabled Defendant to receive more than Defendant would have received if the Transfers had not been made and if Defendant received payment of such debt to the extent provided by Chapter 7 of the Bankruptcy Code.

7. Plaintiff may recover the value of the Transfers from Defendant as the initial transferee of the Transfers.

WHEREFORE, Trustee prays this Court enter judgment against Defendant:

- A. Avoiding the Transfers pursuant to 11 U.S.C. § 547(b);
- B. Awarding Trustee \$22,605.44 pursuant to 11 U.S.C. § 550 as the value of the avoided Transfers;
- C. And prays for such other and further relief as is just and proper.

Respectfully submitted,

CAPES, SOKOL, GOODMAN & SARACHAN, PC

By: /s/ Spencer P. Desai
SPENCER P. DESAI (#2974)
7701 Forsyth Boulevard, Twelfth Floor
St. Louis, Missouri 63105
(314) 721-7701
Fax No. (314) 721-0554
desai@capessokol.com

ATTORNEYS FOR CHAPTER 7 TRUSTEE
TRACY A. BROWN

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing pleading was served by electronic filing in the CM/ECF system of the United States Bankruptcy Court for the Eastern District of Missouri or via U.S. Mail, postage prepaid or facsimile this 20th day of April, 2010, to:

Fastenal Company
c/o CT Corporation System
120 South Central Avenue
Clayton, MO 63105

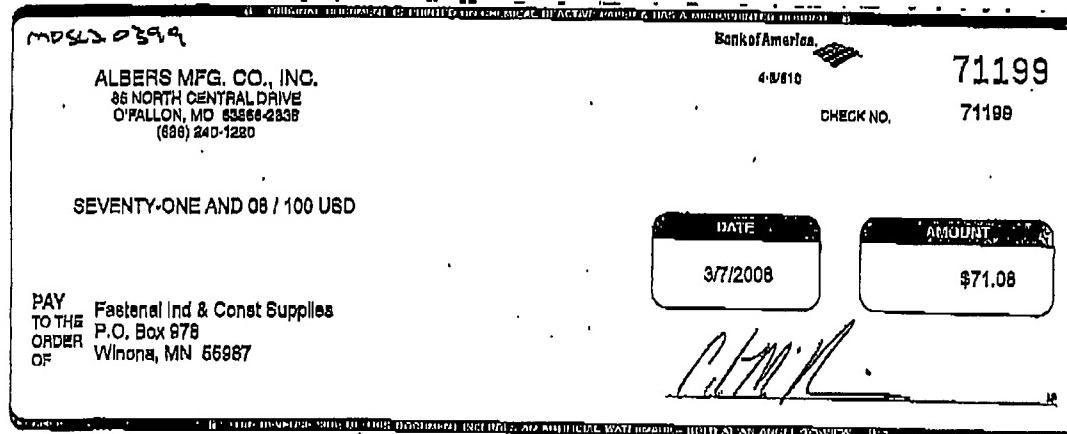
Peter D. Kerth, Esq.
Gallop, Johnson & Neuman, L.C.
101 South Hanley, Suite 1600

Peter Lumaghi, Esq.
Office of the U.S. Trustee
111 South Tenth Street, Suite 6353
St. Louis, MO 63102

/s/ Wendy M. Hickey

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Amount:	\$71.08	Sequence Number:	4292876127
Account:	[REDACTED] 4964	Capture Date:	03/26/2008
Bank Number:	08100003	Check Number:	71199



<p>FOR DEPOSIT ONLY</p> <p>FASTENAL</p>	
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Electronic Endorsements:

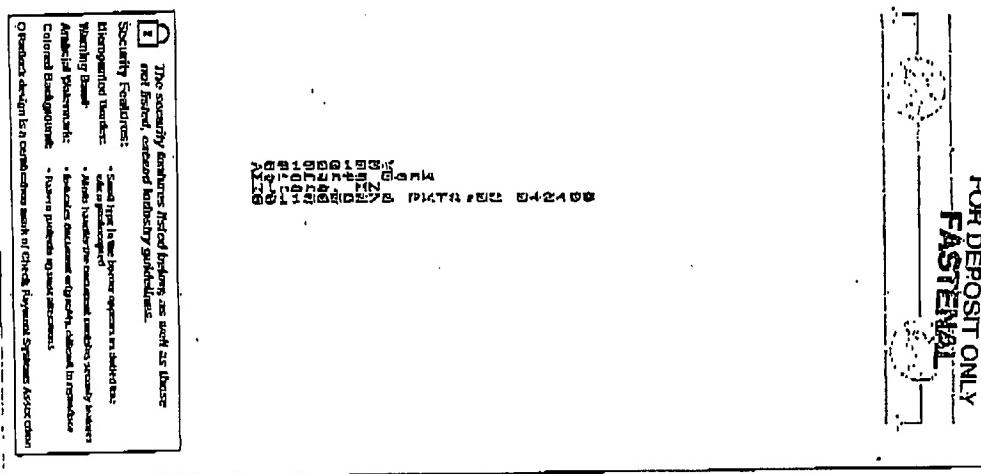
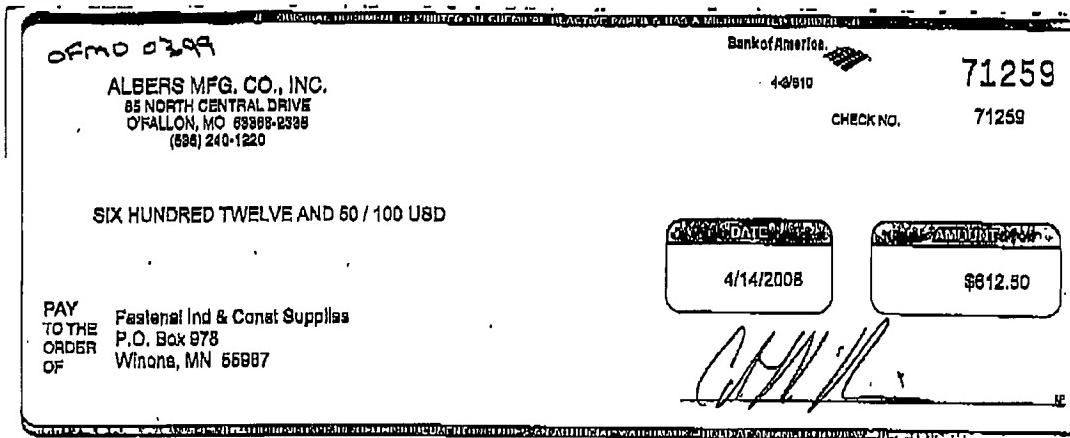
Date	Sequence	Bank #	BOFD	Bank Name
03/26/2008	115700041	91900193	Y	MERCHANTS BANK, NA
03/26/2008	004292876127	111012822	N	BANK OF AMERICA, NA
03/26/2008	005010821980	74909962	N	JPMORGAN CHASE BANK,

EXHIBIT

A

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Amount: \$612.50 Sequence Number: 3292429277
Account: 74964 Capture Date: 04/24/2008
Bank Number: 08100003 Check Number: 71259



Electronic Endorsements:

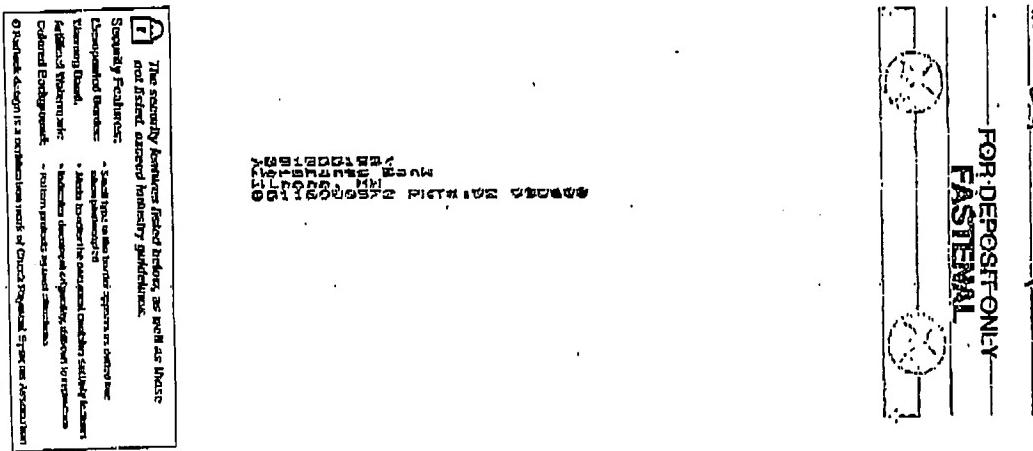
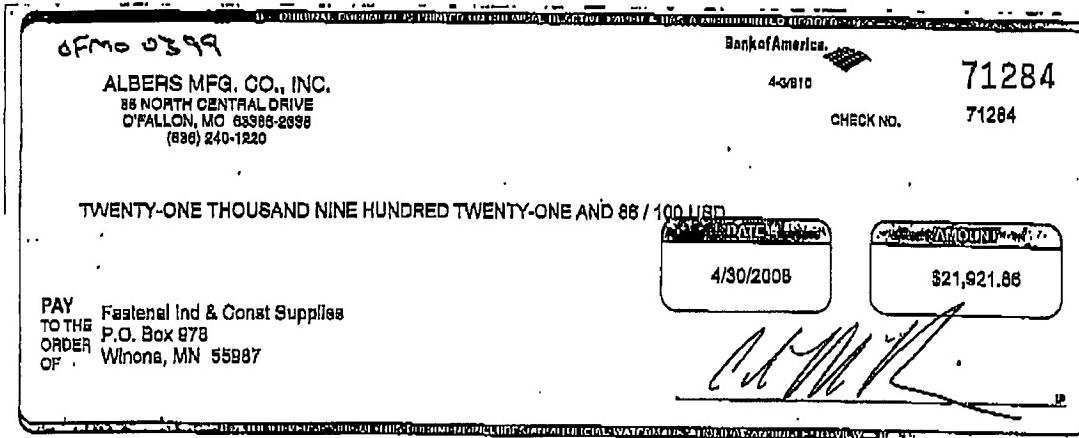
Date	Sequence	Bank #	BOFD	Bank Name
04/24/2008	003292429277	111012822	N	BANK OF AMERICA, NA
04/25/2008	006510590130	74909962	N	JPMORGAN CHASE BANK,
04/24/2008	113850276	91900193	Y	MERCHANTS BANK, NA

EXHIBIT

B

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Amount: \$21,921.86 Sequence Number: 3892043905
Account: [REDACTED] 4964 Capture Date: 05/06/2008
Bank Number: 08100003 Check Number: 71284



Electronic Endorsements:

Date	Sequence	Bank #	BOFD	Bank Name
05/06/2008	003892043905	111012822	N	BANK OF AMERICA, NA
05/06/2008	005010619093	74909962	N	JPMORGAN CHASE BANK,
05/06/2008	116080572	91900193	Y	MERCHANTS BANK, NA

EXHIBIT

B104 (FORM 104) (08/07)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)
PLAINTIFFS Tracy A. Brown, Chapter 7 Trustee	DEFENDANTS Fastenal Company	
ATTORNEYS (Firm Name, Address, and Telephone No.) Spencer P. Desai, Capes, Sokol, Goodman & Sarachan 7701 Forsyth Blvd., 12th fl., St. Louis, MO 63105 (314) 721-7701	ATTORNEYS (If Known)	
PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input checked="" type="checkbox"/> Trustee	PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input checked="" type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) To recover transfers pursuant to 11 U.S.C. Section 547(b)		
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
<p>FRBP 7001(1) – Recovery of Money/Property</p> <p><input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input checked="" type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other</p> <p>FRBP 7001(2) – Validity, Priority or Extent of Lien</p> <p><input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property</p> <p>FRBP 7001(3) – Approval of Sale of Property</p> <p><input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h)</p> <p>FRBP 7001(4) – Objection/Revocation of Discharge</p> <p><input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e)</p> <p>FRBP 7001(5) – Revocation of Confirmation</p> <p><input type="checkbox"/> 51-Revocation of confirmation</p> <p>FRBP 7001(6) – Dischargeability</p> <p><input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny</p> <p style="text-align: center;">(continued next column)</p>		
<p>FRBP 7001(6) – Dischargeability (continued)</p> <p><input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other</p> <p>FRBP 7001(7) – Injunctive Relief</p> <p><input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other</p> <p>FRBP 7001(8) Subordination of Claim or Interest</p> <p><input type="checkbox"/> 81-Subordination of claim or interest</p> <p>FRBP 7001(9) Declaratory Judgment</p> <p><input type="checkbox"/> 91-Declaratory judgment</p> <p>FRBP 7001(10) Determination of Removed Action</p> <p><input type="checkbox"/> 01-Determination of removed claim or cause</p> <p>Other</p> <p><input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa et.seq. <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)</p>		
<input type="checkbox"/> Check if this case involves a substantive issue of state law	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23	
<input type="checkbox"/> Check if a jury trial is demanded in complaint	Demand \$ 22,605.44	
Other Relief Sought		

B104 (FORM 104) (08/07), Page 2

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Albers Manufacturing Company, Inc.	BANKRUPTCY CASE NO. 08-43324-399	
DISTRICT IN WHICH CASE IS PENDING Eastern District of Missouri	DIVISION OFFICE Eastern	NAME OF JUDGE Judge Schermer
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF)		
<p>/s/ Spencer P. Desai</p>		
DATE 4/20/2010	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Spencer P. Desai	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.